

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

SENATE BILL 179

**54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020**

INTRODUCED BY

Elizabeth "Liz" Stefanics

AN ACT

RELATING TO DEPARTMENT OF ENVIRONMENT RULEMAKING; ENACTING A  
NEW SECTION OF THE STATE RULES ACT TO PROVIDE A LIMITED  
EXCEPTION FROM PUBLIC COMMENT PERIOD AND HEARING REQUIREMENTS  
FOR ADOPTION BY REFERENCE OF A RULE MANDATED BY A FEDERAL  
AGENCY; AMENDING RULEMAKING PROVISIONS OF THE ENVIRONMENTAL  
IMPROVEMENT ACT AND THE HAZARDOUS WASTE ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of the State Rules Act is  
enacted to read:

"[NEW MATERIAL] LIMITED EXCEPTION TO PUBLIC COMMENT AND  
HEARING REQUIREMENTS.--Notwithstanding another provision of  
law, a public comment period and a public hearing are not  
required for prospective adoption by reference of a rule  
mandated by a federal agency in order for the state to maintain

.216377.1SA

underscored material = new  
~~[bracketed material]~~ = delete

underscored material = new  
[bracketed material] = delete

1 authorization to implement a federal program or to receive  
2 federal funding."

3 SECTION 2. Section 74-1-9 NMSA 1978 (being Laws 1971,  
4 Chapter 277, Section 13, as amended) is amended to read:

5 "74-1-9. ADOPTION OF REGULATIONS--NOTICE AND HEARING--  
6 APPEAL.--

7 A. Any person may recommend or propose regulations  
8 to the board for promulgation. The board shall determine  
9 whether [~~or not~~] to hold a hearing within sixty days of  
10 submission of a proposed regulation.

11 B. [~~No~~] A regulation shall not be adopted until  
12 after a public hearing by the board unless adoption of the  
13 regulation is a mandatory requirement to maintain state  
14 authorization to implement a federal program or to receive  
15 federal funding. As used in this section, "regulation"  
16 includes any amendment or repeal [~~thereof~~]. Hearings on  
17 regulations of nonstatewide application shall be held within  
18 [~~that~~] the area [~~which~~] that is substantially affected by the  
19 regulation. Hearings on regulations of statewide application  
20 may be held at Santa Fe or within any area of the state  
21 substantially affected by the regulation. In making its  
22 regulations, the board shall give the weight it deems  
23 appropriate to all relevant facts and circumstances presented  
24 at the public hearing, including but not limited to the:

25 (1) character and degree of injury to or

.216377.1SA

underscored material = new  
~~[bracketed material] = delete~~

1 interference with health, welfare, animal and plant life,  
2 property and the environment;

3 (2) ~~the~~ public interest, including the  
4 social, economic and cultural value of the regulated activity  
5 and the social, economic and cultural effects of environmental  
6 degradation; and

7 (3) technical practicability, necessity for  
8 and economic reasonableness of reducing, eliminating or  
9 otherwise taking action with respect to environmental  
10 degradation.

11 C. The standards for regulations set forth in  
12 Subsection ~~A~~ B of this section do not apply to the  
13 promulgation of regulations under the Air Quality Control Act  
14 or any other act in which specific standards are set forth for  
15 the board's consideration.

16 D. Notice of the hearing shall be given at least  
17 sixty days prior to the hearing date and shall state the  
18 subject, the time and the place of the hearing and the manner  
19 in which interested persons may present their views. The  
20 proposed language amending any existing regulation or any  
21 proposed new regulation shall be made available to the public  
22 as of the date the notice of the hearing is given. The notice  
23 shall also state where interested persons may secure copies of  
24 any proposed amendment or new regulation. The notice shall be  
25 published in a newspaper of general circulation in the area

.216377.1SA

underscored material = new  
[bracketed material] = delete

1 affected. Reasonable effort shall be made to give notice to  
2 all persons who have made a written request to the board for  
3 advance notice of hearings.

4 E. At the hearing, the board shall allow all  
5 interested persons reasonable opportunity to submit data,  
6 proposed changes to the proposed regulation, views or arguments  
7 orally or in writing and to examine witnesses testifying at the  
8 hearing. Any person heard or represented at the hearing shall  
9 be given written notice of the action of the board.

10 F. The board may designate a hearing officer to  
11 take evidence in the hearing. A transcript shall be made of  
12 the entire hearing proceedings.

13 G. ~~[No]~~ A regulation or an amendment or repeal  
14 ~~[thereof]~~ of a regulation adopted by the board shall not become  
15 effective until thirty days after its filing under the State  
16 Rules Act.

17 H. Any person who is or may be affected by a  
18 regulation adopted by the board may appeal to the court of  
19 appeals for further relief. All such appeals shall be upon the  
20 transcript made at the hearing and shall be taken to the court  
21 of appeals within thirty days after filing of the regulation  
22 under the State Rules Act.

23 I. The procedure for perfecting an appeal to the  
24 court of appeals under this section consists of the timely  
25 filing of a notice of appeal with a copy attached to the

.216377.1SA

underscored material = new  
[bracketed material] = delete

1 regulation from which the appeal is taken. The appellant shall  
2 certify in [~~his~~] the notice of appeal that arrangements have  
3 been made with the board for preparation of a sufficient number  
4 of transcripts of the record of the hearing on which the appeal  
5 depends to support [~~his~~] the appeal to the court, at the  
6 expense of the appellant, including three copies [~~which he~~]  
7 that the appellant shall furnish to the board.

8 J. Upon appeal, the court of appeals shall set  
9 aside the regulation only if found to be:

10 (1) arbitrary, capricious or an abuse of  
11 discretion;

12 (2) not supported by substantial evidence in  
13 the transcript; or

14 (3) otherwise not in accordance with law."

15 SECTION 3. Section 74-4-5 NMSA 1978 (being Laws 1977,  
16 Chapter 313, Section 5, as amended) is amended to read:

17 "74-4-5. ADOPTION OF REGULATIONS--NOTICE AND HEARING.--

18 A. [~~No~~] A regulation shall not be adopted, amended  
19 or repealed until after a public hearing by the board unless  
20 adoption of the regulation is a mandatory requirement to  
21 maintain state authorization to implement a federal program or  
22 to receive federal funding. Hearings on regulations shall be  
23 held in Santa Fe or in an area of the state substantially  
24 affected by the regulations. In making its regulations, the  
25 board shall give the weight it deems appropriate to all

.216377.1SA

underscoring material = new  
~~[bracketed material]~~ = delete

1 relevant facts and circumstances presented at the public  
2 hearing, including but not limited to:

3 (1) the character and degree of injury to or  
4 interference with the environment or public health; and

5 (2) the technical practicability and economic  
6 reasonableness of the regulation.

7 B. Notice of the hearing shall be given at least  
8 thirty days prior to the hearing date and shall state the  
9 subject, the time and the place of the hearing and the manner  
10 in which interested persons may present their views. The  
11 notice shall also state where interested persons may secure  
12 copies of any proposed regulation. The notice shall be  
13 published in a newspaper of general circulation in the area  
14 affected. Reasonable effort shall be made to give notice to  
15 all persons who have made a written request to the board for  
16 advance notice of hearings.

17 C. At the hearing, the board shall allow all  
18 interested persons reasonable opportunity to submit data, views  
19 or arguments orally or in writing and to examine witnesses  
20 testifying at the hearing. Any person heard or represented at  
21 the hearing shall be given written notice of the action of the  
22 board.

23 D. The board may designate a hearing officer to  
24 take evidence in the hearing. A transcript shall be made of  
25 the entire hearing proceedings.

.216377.1SA

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

E. No regulation or amendment or repeal of a regulation adopted by the board shall become effective until thirty days after its filing under the State Rules Act."

underscoring material = new  
~~[bracketed material]~~ = delete